IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9166 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYKANT ALIAS JAGAN PARSHRAM MADRASHI

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 9166 of 2003

MR SATISH R PATEL for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

7.6.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was declared as 'bootlegger'.

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon the fact of registration of crimes against the petitioner three in number, on 8.4.2003, 30.4.2003 and 6.6.2003, whereby some quantity of country liquor as well as foreign liquor was found in possession of the petitioner. The cases are registered against the petitioner under sec. 66(1)(B), 65(E) and 81 of the Bombay Prohibition Act. The detaining authority further relied upon the in-camera statements as recorded by the sponsoring authority on 5.6.2003 and verified by the detaining authority on 6.6.2003. By in-camera statements two unreported incidents are disclosed which are occurred on 15.5.2003 and 9.5.2003. From the above material, the detaining authority passed the above said order of detention.

Ld. advocate Mr SR Patel for the petitioner and ld. AGP Mr RM Chauhan for the respondents were heard at length. The affidavit in reply filed by the detaining authority as placed on record, is also taken into consideration.

OUt of various grounds raised on behalf of the petitioner and controverted by ld. AGP, from the rival contentions, it appears that this matter can be considered and decided on sole ground whether the order impugned is vitiated on account of no material before the detaining authority to reach to subjective satisfaction that the objectional activities of the petitioner was to the extent to be prejudicial to the maintenance of pubic order. The detaining authority, in this respect, taken two aspects into consideration. Firstly, registration of three crimes against the petitioner under the Bombay Prohibition Act but the mere fact of registration of crimes against the petitioner under the Bombay Prohibition Act would not lead to subjective satisfaction that the activities of the petitioner were objectional to the extent of to be prejudicial to the maintenance of public order. When order came to be passed, in all the three cases, the investigation by the police was going on, therefore, the fact of registration of the crimes under the Bombay Prohibition Act could hardly be said to be an activities prejudicial to the maintenance of public order. While, thereafter, considering two in-camera statements, it clearly transpires that those occurred on

15.5.2003 and 9.5.2003 are the incidents in the individual in nature and not involving the society at large. It is the degree and extent of the reach of the objectional activities upon the society which is vital for considering the question whether man has committed only a breach of law and order or has acted in a manner likely to be prejudicial to the maintenance of public order or even the tempo of life of the community. It is the length, magnitude and intensity of the questionable activity of a person which is vital to find out whether the activity is prejudicial to the maintenance of public order. Therefore, in each case, the court is required to find out from the fact of each case whether the objectional activities falls within the scope of disturbing the public order. While going through the statements of the witnesses, the incident which witness narrated occurred on 9.5.2003 discloses that on that day when witness was standing near his residential society, the petitioner and his associates approached him and insisted that the illegal liquor which was likely to reach to that area was to be kept in the house of the witness. The witness refused to act accordingly and, therefore, he was beaten by the petitioner. Though the crowd was gathered but on account of threat of the petitioner and his associates, the crowd was disbursed. Though it is also stated by the witness that due to this quarrel the traffic was disturbed in the locality and there was fear and terror. While in the other incident, which occurred on 15.5.2003, the witness stated that while he was going to the temple, he found that the petitioner was selling illegal liquor and the witness attempted to persuaded the petitioner to keep away from the illegal activities and that to when the same was carried out near the temple. On saying so, the petitioner was instigated and the witness was beaten by the petitioner. The crowd was gathered but on account of threat of the petitioner, the crowd was disbursed, the traffic was also disrupted in the locality. If these two statements are considered on totality it clearly revealed the individual disputes picked up by the petitioner with the witness instead of a large section of society being involved and affected due to the activities of the petitioner. These are the incidents which at the most can be taken care of by the maintenance of law and order, but it could not be said that by these incidents, the public order was affected prejudicially. Therefore, the subjective satisfaction arrived at by the detaining authority in this respect is vitiated on account of no material before the detaining authority to come to the subjective satisfaction that by objectional activities, the public order was disturbed. The order impugned,

therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 7.6.2003 by the Police Commissioner, Ahmedabad city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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